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September 28, 2006

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Ex Parte Submission** in the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123

Dear Ms. Dortch:

On September 27, 2006, Richard Schatzberg, Founder and CEO of Aequus Technologies Corp. (which is the parent of Snap Telecommunications, Inc.), David Dinin, President of Aequus, and the undersigned participated in a teleconference with Michelle Carey, Senior Legal Advisor to Chairman Martin. On the same day, Mr. Dinin and the undersigned met with John Hunter, Chief of Staff & Senior Legal Advisor, and Cristina Pauzé, Legal Advisor, in Commissioner McDowell's office. During both meetings, the parties urged the Commission to grant Snap's pending request for a limited waiver (expiring on March 31, 2007) regarding the VRS interoperability rule, filed in the above-captioned proceeding on July 14, 2006. The parties distributed the attached document for discussion.

Kindly direct any questions about this matter to my attention.

Respectfully submitted,

/s/

Francis M. Buono

Attachment

cc: Michelle Carey
John Hunter
Cristina Pauzé

Grant of Snap's Limited 5-Month Waiver is in the Public Interest

I. BACKGROUND

A. Snap firmly supports VRS interoperability and agrees with the FCC and Consumer Groups that interoperability is in the best interest of VRS users and the VRS industry. Snap is diligently working to complete its interoperability solution, which will embrace innovative VRS technology yet also be backwardly compatible with legacy VRS technology.

B. Snap filed for FCC certification as a VRS provider in January 2006.

C. Snap informed the FCC in a 3/31/06 *ex parte* letter that its interoperability solution would take up to 12 months to complete - ending on 3/31/07.

D. The FCC adopted its VRS interoperability order on 5/3/06. The rules became effective on 7/31/06.

E. The FCC certified Snap as a VRS provider on 5/8/06.

F. In addition to Snap's unique status as a company committed to advancing VRS technology beyond existing legacy systems, Snap's waiver petition is unique in another sense as well: Snap was the subject of bad timing in that its VRS certification application was submitted (in Jan. 2006) and processed initially under the then-existing set of VRS rules with which Snap was fully compliant, yet its FCC grant was conditioned on compliance with the new interoperability rule. Snap was thus caught in the middle of its implementation phase, after it had made significant investments and contracted with various partners to pursue its current innovative business model.

G. The Bureau encouraged Snap to file a waiver request given its unique position.

H. Snap filed its waiver petition on 7/14/06, requesting a waiver of the interoperability rule until 3/31/07. While the initial request was for 8 months, Snap now only needs a 5-month waiver (11/1/06 - 3/31/07).

I. Snap is on schedule to complete its interoperability solution within the timeframe explained to the Commission in its 3/31/06 *ex parte* letter, precisely because Snap has consistently been working on and investing in this solution with its key partner and systems integrator, WorldGate Communications, *even during the time prior to Snap's certification by the FCC as a VRS provider.*

II. GRANT OF THE WAIVER WOULD PROVIDE SUBSTANTIAL CONSUMER BENEFITS.

A. *Snap's SIP/H.264-based VRS Offerings and Ojo Video Phones Will Provide Greater Functional Equivalency than Current VRS Technology*.

1. **H.264 and the Ojo Will Provide Video Quality that is Functionally Equivalent to the Current High Quality of Voice Calls**. The legacy video phone technology used by all VRS providers -- namely, H.323 and H.263 -- often

results in choppy, low-quality video call sessions, due to latency issues, information loss, and jitter. By contrast, H.264 offers many benefits over its predecessor H.263, including superior image quality, a simplified structure, and decreased network errors. And the Ojo provides its superior "true to life" video quality *at a lower data rate (110 Kbps)* than existing video phones, which will alleviate the need for VRS users to purchase an expensive "business class or premium" broadband service simply to make and receive VRS calls.

2. **SIP Will Provide a Superior Platform for E-911 Services**. Because SIP uses MIME technology for content formatting, both location information and media description can form a multipart entity in SIP message content. Consequently, using SIP, service providers will be able to know who is on their network and where they are located, allowing them to route E-911 calls nationally to support end users. SIP is currently the focus of extensive efforts by leading industry players and standards organizations such as the IETF to develop a robust E-911 solution for IP-based services like VoIP and VRS. The National Emergency Number Association ("NENA"), recognized by the FCC as a leader in this area, recently published its updated E-911 specification ("i2") in December 2005 which specifies SIP for communication with E-911 location servers, *and assumes that H.323 suppliers will translate to SIP*. SIP is the best platform to ensure that these efforts lead to an E-911 solution for VRS that is functionally equivalent to the E-911 services that are universally available to hearing individuals.

3. **SIP Will Establish an Optimal Platform for Greater Interoperability and Functional Equivalency as Technology Evolves**. The FCC has recognized that "functional equivalency" is, by nature, a continuing goal that must be periodically reassessed. SIP is an optimal platform to facilitate such ongoing functional equivalency. Notably, given the more highly extensible and flexible nature of SIP, particularly in terms of its ability to more easily integrate new standards, codecs, and applications that may develop in the future than is possible with H.323, SIP is widely hailed as a key foundation and driver for broad interoperability and innovation in IP-based services such as VoIP and VRS.

4. **Consumer Groups and Others Have Supported Snap's Innovative Efforts**. TDI, NAD, and other Consumer Groups have universally lauded Snap's commitment to introduce SIP, H.264, and other innovations into the VRS marketplace. No party has disputed the benefits of this platform for VRS users.

5. **A Substantial Number of Individuals Have Already Signed Up to Receive Snap's Service**. The best testament to the more functionally equivalent nature of Snap's offering is the amazing consumer response it has generated to date. *Even though Snap has done no marketing*, a very significant number of hard-of-hearing individuals have already completed an application at the Snap VRS web site to become Snap customers as soon as Snap launches. These users, many of whom are current users of other VRS providers, are enthusiastic for Snap to launch its business as soon as possible.

In short, by embracing SIP, H.264, and the Ojo as the foundation of its entry into the VRS marketplace, Snap will fulfill several of the key public interest objectives consistently identified by the Commission, including "bring[ing] innovation to the provision of VRS . . . both with new equipment and service features" and "advanc[ing]

technological development, increas[ing] quality of service, and reduc[ing] costs." (*VRS Certification Order*, 20 FCC Rcd 20577, ¶¶ 21 and 26 (2005)).

B. *Other Public Interest Benefits*. Grant of Snap's waiver request will also lead to the immediate introduction of new VRS competition -- thereby lowering the VRS reimbursement rate --, as well as greater broadband deployment (particularly since the Ojo is plug-and-play compatible with standard cable modem and DSL connections) and a new team of highly trained VRS interpreters.

III. SNAP HAS COMMITTED TO EXTENSIVE CUSTOMER PROTECTION MEASURES TO MINIMIZE CONSUMER HARM ASSOCIATED WITH A WAIVER GRANT.

A. *H.323/H.263 Users Will Not Be Harmed*. While users with H.323/H.263 phones will not be able to call Snap during the limited waiver period, they will not be harmed because they will still be able to call all (8) other VRS providers (all of which use the legacy H.323/H.263 protocols). The only harm with respect to these users will be *to Snap itself*, which will forego reimbursement for the potential minutes of use from these VRS callers during the waiver period. Indeed, the prospect of Snap being able to reach out and serve such users provides additional motivation for Snap to expeditiously complete its interoperability solution.

B. *Snap's Ojo Users Will Not Be Harmed*. Snap fully appreciates the FCC's and Consumer Groups' legitimate interest in preserving alternative VRS calling options for VRS users, particularly in times of emergency. While Ojo users will not be able to call other VRS providers during the 5-month waiver period, ***Snap will commit to the following measures to mitigate any consumer harm:***

1. Snap will avoid all marketing and other activities that involve pursuing new subscribers, including putting a note on its web site that the company is not currently initiating new subscribers until completion of its interoperability solution.

2. Snap will advise every one of its VRS subscribers, both new and existing, prominently and in plain language, that they will not be able to make or receive VRS calls to or from other VRS providers or VRS users during the waiver period.

3. Snap will obtain and keep a record of the affirmative acknowledgement by every one of its VRS subscribers, both new and existing, of having received and understood this advisory.

4. Snap will distribute to all of its subscribers, both new and existing, stickers warning subscribers that interoperability between Snap and other VRS providers will not be available until 3/31/07 and instructing subscribers to place these stickers on and/or near the Ojo used in conjunction with the Snap VRS service.

5. Snap will submit a letter to the FCC detailing its compliance with the above requirements no later than 90 days after the effective date of its waiver grant.

These customer notice/consent commitments *exceed* what the FCC deemed to be effective and appropriate to minimize potential consumer harm in the VoIP E-911 context (*E-911 for IP-Enabled Services,* 20 FCC Rcd 10245, ¶¶ 46-51 (2005)) and in the 911-TTY context during a one-year waiver period when key Commission-required 911

functionality was unavailable to certain TTY users (*see 911-TTY Waiver Order*, 17 FCC Rcd 12084, ¶ 25 (2002)). Snap respectfully submits that they should be equally acceptable in this case to minimize any potential consumer harm.

IV. DENIAL OF THIS WAIVER WOULD SIGNIFICANTLY HARM CONSUMERS.

A. Waiver denial could seriously delay Snap's entry into the VRS marketplace, possibly for a longer period than the requested five-month waiver. Lack of cost reimbursement for Snap and the inability to test its interoperability solution in a live, fully operational setting would be key causes for these further delays.

B. Waiver denial could actually threaten Snap's ultimate viability and ability to enter the VRS marketplace. Snap is already spending several hundred thousand dollars per month to move towards a formal launch of its VRS services and complete its interoperability solution, a precarious position given that no revenue is being generated to cover these costs.

C. If Snap's entry is delayed or derailed, consumers will lose, since they will continue to be deprived of the innovation, competition, broadband-enhancing, and other public interest benefits that Snap's entry will facilitate.

D. Because the rest of the communications industry is embracing SIP and H.264, the VRS industry, with its continued reliance solely on the legacy H.323 and H.263 technologies, stands alone as a relic and island. As such, delaying or denying Snap's innovative technology would further entrench the existing technological and functionality chasm that exists between VRS and other communications sectors, contrary to fundamental congressional and Commission objectives.

V. GRANT OF THE WAIVER IS SUPPORTED BY SUBSTANTIAL FCC PRECEDENT.

The FCC has granted temporary waivers well beyond five months, ***and, indeed, even permanent waivers*****,** in situations where lack of interoperability or even lack of access to critical 911 or emergency alert services was the central issue, in order to achieve the same innovation, competition, broadband, and other public interest benefits that would result in this case.

A. <u>*Innovation Waiver Cases*</u>.

1. *911 Call Processing Waivers*, 15 FCC Rcd 1911, ¶¶ 8, 10-12 (2000) (granting Nokia a four-month waiver to deploy an alternate 911 call completion method that "offers certain advantages associated with digital technology, such as improved capacity, call quality, and coverage, as well as increased talk time for portable phones," and "represents a meaningful improvement in 911 call processing technology that has the potential to help improve wireless 911 reliability.").

2. *911-TTY Waiver Order*, 16 FCC Rcd 18253, ¶¶ 9, 20 (2001) (granting a year-long waiver of the requirement to provide the location of wireless 911 callers because AT&T's ultimate solution would facilitate "substantial public safety benefits 'including rapid initial deployment of [Automatic Location Identification] capability with a relatively brief transition to even more precise levels of accuracy.").

3. *911-TTY Waiver Order* ¶ 22 (granting telecom carriers an additional 18 months in which to transition their subscribers to a new, CDMA-based digital TTY-capable network and to phase out their TDMA network).

4. *Elastic Networks Part 68 Waiver,* 16 FCC Rcd 13974, ¶ 10 (2001) (granting a *permanent waiver* of the out-of-band metallic signal power limitations contained in Part 68, based in substantial part on determination that Elastic's Stormport Modem "would increase consumer access to advanced telecommunications services, particularly in rural areas where ADSL services are not available.").

5. *Cox "Plug-and-Play" Waiver*, 19 FCC Rcd 13543 (2004) (granting Cox a six-month waiver of the FCC's "plug-and-play" interoperability rules to foster the development of new or improved video programming services).

Because Snap, through its reliance on SIP and H.264, is a pioneer for greater innovation and greater functional equivalency in the VRS marketplace, granting Snap's waiver would be consistent with both the waiver orders described above and the FCC's and Congress's ongoing commitment to the introduction of improved technology in the VRS industry.

B. *Increased Competition Waiver Cases*.

1. *BellSouth Waiver Order,* 19 FCC Rcd 15607, ¶ 8 (2004) (granting a *permanent* waiver of the plug-and-play interoperability rules for two systems, specifically to ensure that BellSouth would "continue to deliver digital services to its subscribers and remain a viable competitor in the MVPD marketplace.").

2. *Ericsson 911 Call Processing Mode Waiver*, 15 FCC Rcd 15671 (2000) (granting waiver from requirement that new analog wireless handsets complete 911 calls to any analog carrier in an area, because denying the waiver would "disrupt handset production and competition at a time when demand for handsets continues to grow strongly," resulting in "higher prices, confusion, and reduced availability of dual band, multimode handsets.").

Snap's entry into the VRS marketplace will bring much-needed additional competition to existing VRS providers, which Snap believes will drive down the VRS reimbursement rate. As such, the above waiver cases support the grant of Snap's requested five-month waiver to allow it to immediately bring such competitive benefits to VRS users.

C. *Waiver Cases Due to Unavailability of Key Technology*. Because Snap is endeavoring to move the industry forward with a focus on SIP and H.264, it faces a unique situation in which key technology to achieve backward compatibility with existing VRS providers' legacy systems will be unavailable for another five months. In similar instances of technological unavailability, the FCC has granted waivers for even longer periods:

1. *911-TTY Waiver Order* ¶ 17 (granting waivers of up to one year in the 911-TTY context to allow small carriers to "obtain equipment and software from their vendors and to install and test the solutions in their systems.").

2. *Charter Waiver*, 15 FCC Rcd 15075, ¶ 13 (2000) (granting waivers of cable interoperability rule for up to 18 months because necessary analog security equipment was not available).

3. *CALEA Petitions*, CC Docket No. 97-213, FCC 00-154, at 1 (rel. Apr. 25, 2000) (adopting streamlined process under which telecom carriers could seek temporary waivers of CALEA requirements because "CALEA-compliant equipment and software has not become available as extensively as the industry had expected in 1998.").

D. *EAS Waiver Cases*. Public Notice, DA 06-1373, at 2 (rel. July, 5, 2006) (granting extensive waivers of emergency alert system ("EAS") requirements to cable systems, sometimes for nearly three years, because "compliance with these [EAS] requirements could cause significant economic hardship in the case of very small cable systems." Snap is in a similar (and, in some senses, a worse) situation -- unlike these small systems, Snap has *no current customers* and will have *no incoming revenues* if its waiver request were denied. And, Snap is only asking for a five-month waiver, far less than the three years some of these cable systems were granted.

E. *FCC Policy on Reasonable Phase-in of Equipment-Related Requirements*. Even beyond the extensive FCC waiver precedent that supports this waiver, the Commission has consistently held that manufacturing design, production, deployment, and testing cycles for new or redesigned equipment must always be taken into account when determining the appropriate effective dates for certain FCC requirements. For example, the Commission took into account the 18-24 months required by a new manufacturing cycle in scheduling the implementation of its closed captioning rules for digital television (*Closed Captioning Requirements for Digital Television Receivers* et al., 15 FCC Rcd 16788, ¶ 56 & n.112 (2000)). Particularly since the Commission did *not* factor new technology production, deployment, or testing cycles into its phase-in period for the VRS interoperability rule, it makes perfect sense that it would accommodate unique cases such as those presented by Snap through waivers. Indeed, in some of the cases cited above, the FCC *both* used an extended phase-in period of five months or more (as with 911-TTY, for example) *and* also granted waivers for individual companies of one year or more *beyond* this phase-in period. In this sense as well, Snap's request is particularly reasonable and fully supported by FCC precedent.